

**STATE OF SOUTH CAROLINA****(Caption of Case)****IN RE:**

Happy Rabbit, LP on Behalf of,

Windridge Townhomes, Complainant,

v.

Alpine Utilities, Inc., Respondent

**BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF SOUTH CAROLINA****COVER SHEET****DOCKET****NUMBER: 2008 - 360 - S**

(Please type or print)

**Submitted by:** Richard L. Whitt**SC Bar Number:** 62895**Address:** Austin & Rogers, P.A.**Telephone:** 803-251-7442508 Hampton Street, Suite 300**Fax:** 803-252-3679Columbia, South Carolina 29201**Other:** 803-256-4000**Email:** rlwhitt@alrlaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

**DOCKETING INFORMATION** (Check all that apply)☐ **Emergency Relief demanded in petition**☐ **Request for item to be placed on Commission's Agenda expeditiously****Other: Routine**

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit of Publication	<input checked="" type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certification of Mailing	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Return	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

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April 2, 2009

**VIA ELECTRONIC FILING**

The Honorable Charles L. A. Terreni  
Chief Clerk and Administrator  
The Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, South Carolina 29210

Re:   • Formal Complaint of Carolyn L. Cook  
      • April 2, 2009, correspondence from ORS's Counsel  
      • **Jurisdiction of The Public Service Commission of South Carolina to Hear a  
        Complaint of a Willful Overcharge Under Regulation R. 105-533 (3), in  
        Light of § 27-33-50 S.C. Code Ann. (1976, as Amended)**

This correspondence is responsive to the April 2, 2009 correspondence of the South Carolina Office of Regulatory Staff's counsel, relevant to the new Complaint of Carolyn L. Cook and Docket No. 2008-360-S.

It is uncontroverted that the Public Service Commission of South Carolina, (hereinafter, "Commission") has exclusive jurisdiction to decide complaints from customers of a public utility, as to a willful overcharge. In order to adjudicate a complaint, the Commission may, and indeed must, take into consideration the General Laws of the State of South Carolina. In the context of this Complaint, the Commission must read the law, *in pari materia*.

Therefore, this Commission must hear the willful overcharge Complaint under R. 105-533 (3) *in pari materia* with § 27-33-50 S.C. Code Ann. (1976, as Amended). The fact that § 27-33-50 does not appear under Title 58 of the S.C. Code is not of any import, as to the Commission's authority to hear and decide willful overcharge Complaints under one of its Regulations. Whenever this Commission finds, after hearing, that the rates charged and collected by a public utility are in anywise in violation of any provision of law, this Commission



shall determine the just and reasonable rates to be charged by a public utility § 58-5-290. The State hereby asserts its rights to regulate the rates and services of every public utility § 58-5-210.

There is overwhelming statutory<sup>1</sup> (see *infra* note 1) and case law authority<sup>2</sup> (see cases cited *infra* note 2) for this Commission to decide a willful overcharge Complaint, in light of § 27-33-50. The following cases were relied upon by counsel for Alpine Utilities, Inc., (hereinafter, "Alpine") in their, "Motion for Summary Judgment", filed with this Commission on March 31, 2009. Both cases cited by Alpine's counsel contain similar language that the Commission **(i) not only has its express statutory authority from the General Assembly but, the Commission has power and jurisdiction, "...impliedly [conferred] by the General Assembly,"** (emphasis added) (see cases cited *infra* note 2) **and (ii) this Commission has powers conferred upon it, "...by reasonably necessary implication by the General Assembly."** (emphasis added) (see cases cited *infra* note 2) Both cases cited by counsel for Alpine acknowledge that this Commission not only has express authority conveyed upon it by the General Assembly of the State of South Carolina, but also has power and jurisdiction impliedly conferred by the General Assembly and powers conferred on it by reasonably necessary implication by the General Assembly. By Alpine's counsel's acknowledgment, this Commission has implied power and jurisdiction and reasonably necessary powers to hear willful overcharge Complaints established under one of its own Regulations, using a specific statute, not contained in Title 58 of the S.C. Code. In addition, this Commission has express authority to hear a willful overcharge Complaint under R. 105-533 (3), using § 27-33-50, as set forth herein and the statutes set forth on Exhibit "A" hereto.

The statutory authority for the Commission to hear the case *sub judice* follows: Alpine by definition is a public utility regulated by this Commission § 58-5-10. This Commission has power and jurisdiction to supervise and regulate the rates and service of every public utility in this State...to be furnished, imposed, or observed, and followed by every public utility in this

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<sup>1</sup> Commission statutes which are applicable are § 58-3-140, § 58-5-10 (4), § 58-5-210, § 58-5-290, and § 58-5-300. (See, Exhibit "A" hereto with each statute set forth.)

<sup>2</sup> See *Kiawah Property Owners Group v. Public Serv. Comm'n of S.C.*, 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) ("The PSC is a government agency of limited power and jurisdiction, which is **conferred either expressly or impliedly by the General Assembly.**") (emphasis added); *City of Camden v. Public Service Comm'n of S.C.*, 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984) ("The Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are **conferred upon it either expressly or by reasonably necessary implication by the General Assembly.**") (emphasis added)

State § 58-3-140. The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State,...and **the State hereby asserts its rights to regulate the rates and services of every “public utility” as herein defined** (emphasis supplied) § 58-5-210. Whenever the Commission shall find, after hearing, that the rates...charges...however or whensoever they shall have theretofore been fixed or established, demanded,...charged or collected by any public utility for any service,...that the rules,...affecting such rates...charges...are...**or in anywise in violation of any provision of law**, the Commission shall,...determine the just and reasonable...charges...or practices to be thereafter observed and enforced and [this Commission] shall fix them by order as herein provided (emphasis supplied) § 58-5-290. In connection with a determination under § 58-5-290 the Commission may consider all facts which in its judgment have a bearing upon a proper determination of the question, although not set forth in the application and not within the allegations contained therein § 58-5-300.

The authority cited above militates against the idea that this Commission cannot hear a willful overcharge Complaint, because a statute outside Title 58 has been violated by a public utility subject to the jurisdiction of this Commission. It is suggested that this Commission defer this Complaint to the Circuit Court, although that Court would not be able to decide and award the damages contemplated by the South Carolina General Assembly when it approved the Commissions Regulation, R. 105-533 (3).

Carolyn L. Cook and Happy Rabbit, a South Carolina Limited Partnership are both entitled to maintain an action before this Commission and the Circuit Court. This Commission has sole authority to declare the proper utility customer relationship between the Complainants and Alpine and sole authority to adjudicate a Complaint of willful overcharge under a Commission Regulation. There is an applicable three-year statute of limitations in the Circuit Court, but no such limitation applies under the willful overcharge regulation of this Commission. Furthermore, the action in the Circuit Court seeks money damages for unfair trade practices, plus attorney's fees, which remedies are not available before the Commission.

Correspondence to Charles L.A. Terreni

April 2, 2009

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Based on the foregoing, Carolyn L. Cook and Happy Rabbit, a South Carolina Limited Partnership are both entitled to maintain their Complaints against Alpine before the Commission.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
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Richard L. Whitt

Jefferson D. Griffith, III

Counsel of Record for Carolyn L. Cook

and Happy Rabbit, a South Carolina

Limited Partnership on behalf of Windridge

Townhomes

RLW/jjy

Enclosure



## **EXHIBIT "A"**

### **SECTION 58-5-10.** Definitions.

When used in Articles 1, 3, and 5 of this chapter:

(4) The term "public utility" includes every corporation and person delivering natural gas distributed or transported by pipe, and every corporation and person furnishing or supplying in any manner heat (other than by means of electricity), water, sewerage collection, sewerage disposal, and street railway service, or any of them, to the public, or any portion thereof, for compensation; provided, however, that a corporation or person furnishing, supplying, marketing, and/or selling natural gas at the retail level for use as a fuel in self-propelled vehicles is not a public utility by virtue of the furnishing, supplying, marketing, and/or selling of natural gas and a corporation or person whose only purpose is the furnishing, supplying, marketing, and/or selling of treated effluent for irrigation purposes is not a public utility by virtue of the furnishing, supplying, marketing, and/or selling of treated effluent if the effluent is not permitted for consumption by a regulatory agency.

### **SECTION 58-3-140.** Powers to regulate public utilities.

(A) Except as otherwise provided in Chapter 9 of this title, the commission is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State.

### **SECTION 58-5-210.** Supervision and regulation of rates and service.

The Public Service Commission is hereby, to the extent granted, vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State, together with the power, after hearing, to ascertain and fix such just and reasonable standards, classifications, regulations, practices and measurements of service to be furnished, imposed, observed and followed by every public utility in this State and the State hereby asserts its rights to regulate the rates and services of every "public utility" as herein defined.

### **SECTION 58-5-290.** Correction by Commission of improper rates and the like.

Whenever the Commission shall find, after hearing, that the rates, fares, tolls, rentals, charges or classifications or any of them, however or whensoever they shall have theretofore been fixed or established, demanded, observed, charged or collected by any public utility for any service, product or commodity, or that the rules, regulations or practices, or any of them, affecting such rates, fares, tolls, rentals, charges or classifications, or any of them, are unjust, unreasonable, noncompensatory, inadequate, discriminatory or preferential or in any wise in violation of any provision of law, the Commission shall, subject to review by the courts, as herein provided, determine the just and reasonable fares, tolls, rentals, charges or classifications, rules, regulations or practices to be thereafter observed and enforced and shall fix them by order as herein provided.

### **SECTION 58-5-300.** All facts may be considered in making correction.

In connection with a determination under Section 58-5-290 the commission may consider all facts which in its judgment have a bearing upon a proper determination of the question, although not set forth in the application and not within the allegations contained therein.

**BEFORE**  
**THE PUBLIC SERVICE COMMISSION**  
**OF SOUTH CAROLINA**  
**DOCKET NO. 2008-360-S**

IN RE: )  
Happy Rabbit, LP on Behalf of, )  
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Complainant, )  
v. )  
 )  
Alpine Utilities, Inc., )  
Respondent )  
\_\_\_\_\_ )

**CERTIFICATE OF SERVICE**

I, Jessica Yun, an employee of Austin & Rogers, P.A., certify that I mailed a copy of Carolyn L. Cook and Happy Rabbit's Correspondence to Charles L.A. Terreni in the above referenced matter as indicated below, via U.S. Mails as addressed below, with proper postage affixed thereto, or e-mail on April 2, 2009.

Attorney Benjamin P. Mustian  
P.O. Box 8416  
Columbia S.C., 29202-8416  
**Via U.S. Mail**

Nanette S. Edwards, Esquire  
**Via e-mail**

Austin & Rogers, P.A.

/S/  
Jessica Yun

Columbia, South Carolina  
April 2, 2009